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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ARI KOLI, SAMI MIKAEL PUURA, and  
DOMINIC STROWBRIDGE

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Appeal 2017-000584  
Application 13/479,985  
Technology Center 2400

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Before JOSEPH L. DIXON, JAMES R. HUGHES, and ERIC S. FRAHM,  
*Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–20 and 49. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The invention relates to managing consumption of content and related information from multiple service providers and information-serving platforms through the use of a common client (*see* Spec. ¶¶ 27–29). Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising facilitating a processing of and/or processing, by a processor, (1) data and/or (2) information and/or (3) at least one signal, the (1) data and/or (2) information and/or (3) at least one signal based, at least in part, on the following:

a request to present one or more content items, wherein the one or more content items include inventory for presenting associated information;

at least one determination of at least one software platform from among a plurality of software platforms based, at least in part, on the one or more content items, metadata associated with the one or more content items, or a combination thereof, wherein the plurality of software platforms are associated with at least one common service and the plurality of software platforms are software platforms for playback of the one or more content items, and

wherein the one or more content items, the metadata associated with the one or more content items, or a combination thereof are associated with at least one of a plurality of service providers; and

at least one determination of the information associated with the one or more content items from the at least one software platform.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Allaire	US 2007/0038931 A1	Feb. 15, 2007
Philpott	US 2011/0145858 A1	June 16, 2011
Kota	US 2012/0084653 A1	Apr. 5, 2012

## REJECTIONS

The Examiner made the following rejections:

Claims 1–10 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1–20 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Philpott, Allaire, and Kota.

## ANALYSIS

### *The Non-Statutory Subject Matter Rejection*

The Examiner finds the method of independent claim 1 is neither tied to a particular machine nor does it transform any material to a different state or thing, and is thus not a patent-eligible process under 35 U.S.C. § 101 (Non-Final Act.<sup>1</sup> 3).

Appellants have not presented specific arguments rebutting the Examiner’s non-statutory subject matter rejection. Accordingly, we *pro forma* affirm the Examiner’s rejection of claims 1–10.<sup>2</sup>

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<sup>1</sup> The Non-Final Action dated December 5, 2014.

<sup>2</sup> The basis for the Examiner’s rejection—the machine-or-transformation test—is elucidated in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010). However, in *Bilski* the Supreme Court held the “machine-or-transformation test is not the sole test for deciding whether an invention is a patent-eligible ‘process.’”

*The Obviousness Rejection*

Appellants contend “*Allaire* fails to disclose or even suggest a plurality of software platforms, wherein the plurality of software platforms are associated with at least one common service. And *Kota* fails to disclose or even suggest a plurality of software platforms for playback” (App. Br. 6). Appellants also argue it is unclear how one would have made the Examiner’s combination of *Allaire* and *Kota* (App. Br. 8–9). Appellants further contend the combination of *Allaire* and *Kota* with *Philpott* would not have resulted in the claimed invention because *Philpott* is directed to delivering content to mobile devices, whereas *Allaire* and *Kota* disclose using non-mobile devices such as desktops and TVs (App. Br. 9). We are not persuaded by Appellants’ arguments for the following reasons.

First, Appellants have not specifically explained why *Allaire* fails to disclose “the plurality of software platforms are associated with at least one common service,” as recited in claim 1 (*see* App. Br. 6–9). Second, Appellants have not specifically explained why *Kota* fails to disclose “the plurality of software platforms are software platforms for playback of the one or more content items,” as also recited in claim 1 (*see id.*). Accordingly, Appellants’ arguments that these claim limitations are missing from *Allaire* and *Kota* are not persuasive. We are also not persuaded by Appellants’ combination argument that “it is unclear how the various software platforms

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*Id.* at 3227. Thus, upon further prosecution, the Examiner may wish to reconsider the machine-or-transformation test basis for the § 101 rejection, particularly given the recitation of a “processor” in claim 1, and instead consider the Supreme Court’s guidance in *Alice Corp. v. CLS Bank Int’l* for determining whether a claim recites a patent-ineligible abstract idea. *See* 134 S. Ct. 2347, 2355–60 (2014).

of *Allaire* . . . match up to the multiple playback methods of *Kota*, where the initially correlated element of *Allaire* regarding the ‘software platforms [that are] associated with content distributor’ . . . and not associated with the service playback” (App. Br. 8).

The Examiner finds *Allaire* discloses multiple software platforms on a client device that can be used for streaming the content of multiple publishers from a content distributor (Final Act. 4–5; Ans. 14–15). Specifically, *Allaire* discloses a “content distribution system 10 includes a service platform 30 maintained by the content distributor 31 . . . and a content delivery network (CDN) 34 that delivers data on behalf of the service platform 30 to the client computer 14” (*Allaire*, ¶ 60). Further, “[a] consumer services module 54 [on client computer 14] provides a user 12 with a variety of web-based and desktop tools to enable consumers to find, aggregate, download, stream, and share content from multiple publishers” (*Allaire*, ¶ 75). However, the Examiner acknowledges while *Allaire* discloses multiple software platforms on a client computer, *Allaire* only explicitly discloses a Flash Player being used as a playback software platform (Ans. 15–16). Thus, the Examiner relies on *Kota* for disclosing numerous types of playback software (*see* *Kota*, ¶ 23), and finds it would have been obvious to include such a variety of playback software on *Allaire*’s client to play different types of content from different publishers (*see* Ans. 16). Appellants have not specifically shown why the Examiner has erred in combining *Allaire* and *Kota* in this manner. Rather, *Allaire* suggests such flexibility in playback software options by describing an embodiment where

streamed video creates an experience that is instant-on with as little buffering as possible; that does not require the user 12 to

choose a video player or select a bandwidth option; that works automatically on approximately 90% plus of installed Internet-connected computers running any version of Windows, Macintosh, Linux or any web browser

(Allaire, ¶ 111).

Finally, we are not persuaded by Appellants' argument that Allaire and Kota are not combinable with Philpott so as to result in the claimed invention, because Philpott is directed to delivering content to mobile devices (App. Br. 9). As noted by the Examiner (Ans. 20), Allaire discloses the client computer 14 could be "a cellular telephone" (Allaire, ¶ 72) and Kota discloses computing system environment 400 could be a "mobile device" (Kota, ¶ 36). Accordingly, each of Philpott, Allaire, and Kota disclose using mobile devices for handling content. Thus, Appellants have not provided a persuasive reason why one would not have been able to implement the modifications suggested by Allaire and Kota in Philpott, as proposed by the Examiner's combination.

Additionally, we are not persuaded by Appellants' new Reply Brief argument that the field of endeavor should be defined as "managing content across a communications network over multiple software platforms associated with a common service," and that Kota is not within the field of endeavor (Reply Br. 3). We note this argument was not timely raised in the Appeal Brief, and is therefore waived. *See, e.g., Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) ("Informative") ("The reply brief is *not* an opportunity to make arguments that could have been made during prosecution, but were not. Nor is the reply brief an opportunity to make arguments that could have been made in the principle brief on appeal to rebut the Examiner's rejections, but were not.").

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We are, therefore, not persuaded the Examiner erred in rejecting claims 1, and claims 2–20 and 49 not specifically argued separately.

### CONCLUSIONS

Under 35 U.S.C. § 101, the Examiner did not err in rejecting claims 1–10.

Under 35 U.S.C. § 103(a), the Examiner did not err in rejecting claims 1–20 and 49.

### DECISION

For the above reasons, the Examiner’s decision rejecting claims 1–20 and 49 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED